

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

NORMA EGAN and JOSEPH EGAN,

Plaintiffs,

v.

X-MODE SOCIAL, INC.,

Defendant.

CASE NO. 1:24-cv-01052 (MSN/WEF)

**DEFENDANT X-MODE SOCIAL, INC.’S MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR ORDER ON UNOPPOSED MOTION TO EXTEND TIME**

Defendant X-Mode Social, Inc. (“X-Mode”), by counsel, moves this Court pursuant to Federal Rule of Civil Procedure 7(b)(1) for an order denying as moot in part and granting in part Plaintiffs’ Unopposed Motion to Extend Time to File Oppositions to Defendant X-Mode Social, Inc.’s Rule 12 Motions, ECF No. 15 (“Unopposed Motion”). For the reasons that follow, the Unopposed Motion is now moot insofar as Plaintiffs sought an extension of their original deadline to file their now-filed oppositions, ECF Nos. 16–17, to X-Mode’s motion to dismiss, ECF No. 12, and motion to strike, ECF No. 9; but the Unopposed Motion remains ripe insofar as Plaintiffs also requested that X-Mode’s deadline to file its reply briefs be set for September 23, 2024. The relevant facts are as follows:

1. On August 14, 2024, undersigned counsel for Defendant X-Mode contacted Plaintiffs’ counsel to meet and confer about X-Mode’s forthcoming responses to the Complaint (X-Mode’s now-filed motion to dismiss, ECF No. 12, and motion to strike, ECF No. 9), and to coordinate as a courtesy on the selection of a hearing date.

2. Plaintiffs’ counsel informed counsel for X-Mode that, in light of their impending

paternity leave and vacation schedules, they needed to seek an extension of the deadline to file their oppositions from August 30 to September 13, 2024.

3. As a courtesy, undersigned counsel for X-Mode agreed not to oppose the Plaintiff's request to set a briefing schedule allowing Plaintiffs more time, and as the parties discussed, Plaintiffs' counsel filed their unopposed motion to set the following schedule:

- a. Plaintiffs' oppositions due on September 13, 2024;
- b. X-Mode's replies due on September 23, 2024; and
- c. Hearing noticed for September 27, 2024.

*See* ECF No. 15. In the meet-and-confer conference, the parties discussed not only the need to accommodate Plaintiffs' counsels' leave schedules, but also the upcoming Labor Day holiday weekend when it could be difficult to reach client representatives on travel at the end of this week through early next week.

4. As discussed, X-Mode filed its motions and set the hearing for September 27, 2024. *See* Docket Entry of Aug. 19, 2024.

5. On August 28, 2024—two days *before the Plaintiffs' original due date* for their oppositions and on the eve of Labor Day weekend when people begin to depart for the holiday, Plaintiffs filed their oppositions. Plaintiffs' counsel did not coordinate with undersigned counsel to discuss this change in timing, which materially affects Defendant's preparation of reply briefs.

6. Despite discussions about avoiding this circumstance in the meet-and-confer conference, Plaintiffs' counsel early filing on the Wednesday before the Labor Day weekend has left Defendant with two business days (if indeed the Thursday and Friday before Labor Day weekend are considered "business" days) to prepare reply briefs and perhaps a response to a new request for judicial notice before a filing deadline for replies (absent extension) of next Tuesday,

September 3, 2024.

7. This scenario is not what undersigned counsel contemplated when it contacted Plaintiffs' counsel as a courtesy before filing X-Mode's responsive pleadings and when undersigned counsel expressed a willingness to accommodate Plaintiffs' counsels' leave schedules.

8. At present, insofar as the Unopposed Motion sought an extension of Plaintiffs' original deadline to file their now-filed oppositions, the Unopposed Motion is moot in part. However, the Unopposed Motion remains ripe insofar as it contemplated that X-Mode's deadline to file its reply briefs would be September 23, 2024.

9. In fairness, and as the parties contemplated when setting a September 27 hearing date, X-Mode requests more than two business days before a holiday weekend to prepare replies for motions that will not be heard nearly a month from now. The Court should grant the Unopposed Motion in part and set X-Mode's deadline to file its reply briefs for September 23, 2024.<sup>1</sup>

Date: August 29, 2024

X-MODE SOCIAL, INC.

By counsel

/s/ Attison L. Barnes, III

Attison L. Barnes, III (Va. Bar No. 30458)

Enbar Toledano (*pro hac vice* pending)

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*Counsel for Defendant X-Mode Social, Inc.*

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<sup>1</sup> To the extent the Court prefers to have briefing completed a bit earlier than September 23, 2024, Defendant will certainly accommodate the Court.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of August, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sends notification of such filing to all counsel of record.

Date: August 29, 2024

/s/ Attison L. Barnes, III  
Attison L. Barnes, III (Va. Bar No. 30458)